

## **Section 8 Administration and Accountability**

### **8.1 Purpose and Intent**

- A. The City and its staff should be encouraged to comply with the Sunshine Ordinance voluntarily; education and training about the Sunshine Ordinance is essential.
- B. The City Manager's Office must provide to the Council regular reports, at least annually, about the City's compliance with the Sunshine Ordinance.

### **8.2 Open Government Officer**

- A. The City will establish the position of Open Government Officer. The Open Government Officer will be a Department Head and report to the City Manager.
- B. The Open Government Officer will:
  - 1. Advise the City Manager on education and training for City Staff on the Sunshine Ordinance and other open government laws;
  - 2. Staff the Open Government Committee;
  - 3. In the event a response to a request for a public record is challenged, act as a liaison to the appropriate City Council, Office of a Council Appointee or City Department to access the record requested;
  - 4. Work with the Records Manager [to assist the community](#) to access [information that can be used to generate](#) statistical reports requested by the community;
  - 5. Coordinate reports to the City Council evaluating and monitoring compliance with the Sunshine Ordinance; and
  - 6. Audit the recordings of closed session to determine compliance with the Brown Act.

### **8.3 Open Government Committee**

- A. The City will establish a neutral and independent Open Government Committee comprised of five members of the community. Each member must have some demonstrated familiarity and experience with open government laws and be a resident of the City of San Jose. Members must not be a paid City employee, a paid employee working on the campaign of a current Councilmember or candidate for City office or a contract lobbyist registered with the City. [No](#)

member may participate as a candidate in any election to public office for a period of one year both before and after tenure on the Committee. One member of the Committee will be an attorney licensed to practice law in California. The Committee's membership should be representative of the community and all members will be required to undergo a screening process to identify any potential conflicts of interest. Members will be appointed by no less than two-thirds vote of the City Council.

B. The Open Government Committee will:

1. Advise the City Council about the Sunshine Ordinance;
2. Determine, if questioned or challenged, the categorization of bodies as policy, ancillary or non-governmental;
3. Prepare reports to the City Council evaluating and monitoring compliance with the Sunshine Ordinance;
4. Investigate complaints and make a finding and recommendation to the City Council and City Manager.
5. Develop an annual report, based on public input, indicating additional public information, if any, that the City should routinely be made available to the public.

C. The Open Government Committee may join a complainant as a plaintiff in a lawsuit filed in Superior Court.

## **8.4 Enforcement**

### **8.4.010 Generally**

Penalties for failing to comply with the Sunshine Ordinance should be progressive. All complaints will be investigated by the Open Government Officer.

- A. If the Open Government Officer determines that the complaint arose out of a minor violation based on a misinterpretation of the Sunshine Ordinance, the person or persons who misinterpreted the Sunshine Ordinance must participate in education and training about the Sunshine Ordinance within 30 days of the date the Open Government Officer finds the violation.
- B. If the Open Government Officer finds intentional non-compliance with the Sunshine Ordinance, he or she will report the findings in a report to the City Manager and the Rules and Open Government Committee.

- C. If the Open Government Officer finds a repeated and willful failure to comply or a policy of non-compliance with the Sunshine Ordinance, he or she may refer the complaint to the Open Government Commission, which may join a complainant as a plaintiff to a lawsuit filed in Superior Court to enforce the Sunshine Ordinance.

#### **8.4.020 Requests for Public Records**

When any response to a request for public records is challenged by the requestor, the Open Government Officer will investigate the challenge. The Open Government Officer may refer the challenge to the Open Government Committee, which will hold a public hearing to resolve the challenge.

#### **8.4.030 Public and Closed Session Meetings**

Complaints about public and closed session meetings must be made within 90 days of the date of the meeting.